

### REMARKS

The Applicant does not believe that examination of the foregoing amendment will result in the introduction of new matter into the present application for invention. Therefore, the Applicant, respectfully, requests that the foregoing amendment be entered and that the claims to the present application, kindly, be reconsidered.

The Office Action dated February 23, 2005 has been received and considered by the Applicant. Claims 1-20 are pending in the present application for invention. The Office Action rejects Claims 1-5, 7-11, and 13-20. Claim 6 and 12 are objected to as being dependent upon a rejected base claim but otherwise stated as being allowable.

The Office Action objects to the specification as failing to provide a proper antecedent basis for the claimed subject matter. Specifically, the Examiner states that the terminology of "a predetermined time period", "a predetermined time interval", and "a predetermined time period" within Claims 1, 3, 9 and 15 are not supported by the specification. The Applicant draws the Examiner's attention to page 4, lines 15-17; page 5, lines 16-24 of the specification as originally submitted; and  $T_{REF}$  in Fig. 4. The objected is clearly disclosed within the aforesaid areas.

The Examiner further states that the limitations for an "apparatus for employing" and "a read system" within Claim 15 are not supported by the specification. The discussion related to Fig. 1 beginning on page 2, line 32 of the specification clearly describes a device for read and writing information from or onto a disc shaped information carrier. This clearly supports the objected to subject matter.

The Examiner further states that the limitation for "a measuring device" within Claim 16 and "a tangential first direction" within Claim 19 are not supported by the specification. The measuring device is shown as counter 72 in Fig. 4 and described on page 5 of the specification lines 16-24. The tangential first direction is described on page 3, lines 14-18.

The Office Action rejects Claims 2 and 12 under the provisions of 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. The forgoing amendment to the claims has corrected the items mentioned by the Examiner in the last office action.

The Office Action dated February 23, 2005 rejects Claims 1, 3-5, 7-11, 13, and

14-15 under the provisions of 35 U.S.C. §102(b), as being anticipated by U.S. Patent No. 4,561,082 issued to Gerard, et al. (hereinafter referred to as Gerard et al.). The Examiner states that Gerard et al. disclose all the elements of the recited elements of rejected claims including the sample signal causing the measurement signal to be sampled at locations having mutually the same intensity level within a predetermined period of time. The Applicant, respectfully, point out that the rejected claims defines subject matter for the sample signal causing the measurement signal to be sampled at locations having mutually the same intensity level and within a predetermined period of time. Accordingly, in order to move this case towards allowance, the foregoing amendment to the claims has modified the independent claims to define subject matter for the sample signal causing the measurement signal to be sampled at locations having mutually the same intensity level and if the measurement signal is not sampled to cause sampling within a predetermined period of time. Gerard et al. do not disclose or suggest a sample signal causing the measurement signal to be sampled at locations having mutually the same intensity level and if the measurement signal is not sampled to cause sampling within a predetermined period of time. Therefore, the claims as amended are believed to be allowable over Gerard et al.

The Office Action rejects Claims 15-20 under the provisions of 35 U.S.C. §103(a) as being unpatentable over Gerard et al. in view of JP No. 09-3200070 by Nakano (hereinafter referred to as Nakano).

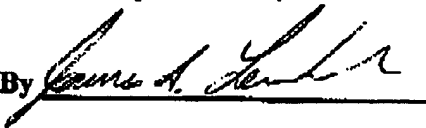
The Examiner states that Gerard et al. disclose all the elements recite by the rejected claims except for the subject matter for if the measurement signal is not sampled within a predetermined period of time, then the sample signal causes the measurement signal to be sampled. The Examiner's position is that the subject matter for if the measurement signal is not sampled within a predetermined period of time, then the sample signal causes the measurement signal to be sampled is taught by Nakano. The Applicant, respectfully, disagrees. Nakano teaches periodic sampling used for a Focus Error (FE) signal. It would be contrary to the teachings of Nakano to attempt to implement the teachings of periodic sampling in an embodiment wherein the sampling is not periodic. Simply put, the rejected claims defines subject matter for sampling when intensity is comparatively high and if the measurement signal is not sampled within a

predetermined time period then sampling the measurement signal. There is no disclosure or suggestion within Nakano to not sample within the periodic time period if the measurement signal has not yet been sampled as defined by the rejected claims. Therefore, this combination attempts to modify Nakano to perform in a manner that was not intended, which is an improper combination. The MPEP at §states that if the “proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)” In order for the teachings of Nakano to be able to perform the subject matter defined by the rejected claims, it would be necessary for the sampling to be able to not be accomplished periodically. This would be unsatisfactory for the intended use of Nakano. Therefore, there is no suggestion or motivation to make the modification to Nakano that would be required to operate in the manner defined by the rejected claims. Therefore, this rejection is, respectfully, traversed.

Applicant is not aware of any additional patents, publications, or other information not previously submitted to the Patent and Trademark Office which would be required under 37 C.F.R. 1.99.

In view of the foregoing amendment and remarks, the Applicant believes that the present application is in condition for allowance, with such allowance being, respectfully, requested.

Respectfully submitted,

By 

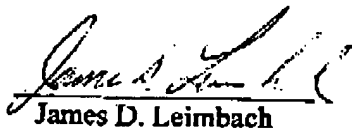
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